



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

May 6, 2003

Mr. Jesús Toscano, Jr.  
Administrative Assistant City Attorney  
City of Dallas  
1500 Marilla Street, 7BN  
Dallas, Texas 75201

OR2003-3043

Dear Mr. Toscano:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 180506.

The City of Dallas (the "city") received a request for information relating to two named individuals and certain policies and procedures. You state that you have no information relating to the requested policies and procedures. The Public Information Act (the "Act") applies only to information in existence at the time the governmental body receives the request for information. *See* Open Records Decision Nos. 452 at 2-3 (1986) (document is not within the purview of the Act if, when a governmental body receives a request for it, it does not exist), 342 at 3 (1982) (Act applies only to information in existence, and does not require the governmental body to prepare new information). Furthermore, the Act does not require a governmental body to create information in response to a request. *See* Open Records Decision 452 (1986). Therefore, the Act does not apply to the requested policies and procedures. You state that some of the requested information will be provided to the requestor. You claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the representative sample of submitted information.<sup>1</sup>

Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. This section encompasses the common-law right to privacy. Pursuant to *United States Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989), where an

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

individual's criminal history information has been compiled or summarized by a governmental entity, the information takes on a character that implicates the individual's right of privacy in a manner that the same individual records in an uncompiled state do not. Thus, when a requestor asks for unspecified information concerning a certain named individual and that individual is a possible suspect, arrestee, or defendant, a law enforcement agency must withhold this information under section 552.101 because that individual's privacy right has been implicated. *See id.* In this case, the requestor seeks "[a]ny and all records concerning any criminal conduct" of a named individual. Thus, we believe that the named individual's right to privacy has been implicated by this portion of the request. Accordingly, to the extent that the city maintains information that depicts the named individual as a possible suspect, defendant, or arrestee, we conclude that you must withhold this information under common-law privacy as encompassed by section 552.101 of the Government Code. *See id.*

You next contend that the employee's personal financial information is protected from disclosure by the common-law right of privacy. Information is protected by the common-law right of privacy when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert denied*, 430 U.S. 931 (1977); *see also* Open Records Decision No. 611 at 1 (1992). Prior decisions of this office have found that financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy, but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983). For example, a public employee's allocation of his salary to a voluntary investment program or to optional insurance coverage which is offered by his employer is a personal investment decision and information about it is excepted from disclosure under the common-law right of privacy. *See* Open Records Decision No. 545 (1990). Likewise, an employee's designation of a life insurance beneficiary is excepted from disclosure under the common law right to privacy. *See* Open Records Decision No. 600 (1992). However, information revealing that an employee participates in a group insurance plan funded partly or wholly by the governmental body is not excepted from disclosure. *See* Open Records Decision No. 600 at 10 (1992). After examining the submitted information, we conclude that the personal financial information that we have marked is confidential under the common-law right of privacy and is, thus, excepted from disclosure under section 552.101 of the Government Code. We find, however, that the remaining information is not highly intimate or embarrassing and you may not withhold this information based on section 552.101 and common-law privacy.

We note that portions of the remaining submitted information may be subject to section 552.117 of the Government Code. Section 552.117(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who timely request that this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(1). However, information that is responsive to a request may not be withheld from disclosure under section 552.117(1) if the official or employee did not request

confidentiality for this information in accordance with section 552.024 or if the request for confidentiality under section 552.024 was not made until after the request for information at issue was received by the governmental body. Whether a particular piece of information is public must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Based on our review of the remaining submitted information, we conclude that the city must withhold the information that we have marked under section 552.117(1), if the employee with whom this information is associated requested confidentiality for this information in accordance with section 552.024 prior to the city's receipt of the request.

The social security number that we have marked may also be confidential under federal law. The 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), make confidential social security numbers and related records that are obtained or maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). The city has cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes it to obtain or maintain this social security number. Therefore, we have no basis for concluding that it is confidential under federal law. We caution the city, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing this social security number, the city should ensure that it was not obtained or is not maintained by the city pursuant to any provision of law enacted on or after October 1, 1990.

Next, you assert that the submitted information contains motor vehicle information subject to section 552.130. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

You must withhold the red-highlighted Texas driver's license number under section 552.130.

You next explain that a portion of the submitted information consists of the city's five digit personnel identification number and that these numbers are used as the first five digits of a six digit account number at the City Employees Credit Union. You assert that the release of this personnel identification number could give members of the general public access to credit union account records. Section 552.136 makes certain access device numbers confidential and provides in pertinent part:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value;

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. Based on your representations, we conclude that, if the employee is in fact a member of the credit union, the city must withhold the yellow highlighted personnel identification number under section 552.136 of the Government Code. As we base our ruling on section 552.136 for this information, we need not address your section 552.101 arguments regarding the personnel identification number.

In summary, the city must withhold the requested information under common-law privacy to the extent it lists the named individual as a criminal suspect, defendant, or arrestee. Personal financial information which we have marked is excepted from disclosure under section 552.101 in conjunction with common-law privacy. We have marked information subject to section 552.117(1) which the city must withhold if the named employee made a timely election under section 552.024 to keep this information private. Otherwise, this information must be released, with the exception of a social security number that may be confidential under federal law. The yellow-highlighted personnel identification number must be withheld from disclosure under section 552.136, if the employee at issue is in fact a member of the credit union. Finally, you must withhold a Texas driver's license number that you have highlighted in red. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

*Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



V.G. Schimmel  
Assistant Attorney General  
Open Records Division

VGS/sdk

Ref: ID# 180506

Enc: Submitted documents

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(w/o enclosures)